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JULIAN BAKERY, INC.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JULIAN BAKERY, INC.,
a California Corporation

Plaintiff,

v.

HEALTHSOURCE INTERNATIONAL,
INC. d/b/a NUOCOCONUT, a California
corporation,

Defendant.

CASE NO. '16CV2594 JAH KSC

COMPLAINT FOR:

- 1. Trademark Infringement (15 U.S.C. § 1114);**
- 2. False Designation of Origin (15 U.S.C. § 1125(a)(1)(A));**
- 3. False Advertising (15 U.S.C. § 1125(a)(1)(B))**
- 4. Unfair Competition (Cal. Bus. & Prof. Code § 17200 *et seq.*);**
- 5. False Advertising (Cal. Bus. & Prof. Code § 17500 *et seq.*);**
- 6. Breach of Implied Warranty of Merchantability;**
- 7. Breach of Implied Warranty of Fitness for a Particular Purpose;**
- 8. Fraud;**
- 9. Intentional Interference with Contract;**
- 10. Intentional Interference with Prospective Economic Advantage;**
- AND JURY TRIAL DEMAND [FRCP 38]**

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1 Plaintiff Julian Bakery, Inc. (“Julian” or “Plaintiff”) for its Complaint
2 against Defendant Healthsource International, Inc. d/b/a Nucoconut
3 (“Healthsource” or “Defendant”) respectfully alleges as follows:

4 **Nature of the Action**

5 1. Julian sells a variety of health foods, including a line of PALEO
6 WRAPS®-branded products. Healthsource is a product supplier, including
7 coconut wraps and coconut flakes, which Julian uses to market and sell its PALEO
8 WRAPS and other products. Healthsource recently began marketing and selling its
9 own coconut-based wraps, improperly utilizing Julian’s PALEO WRAPS®
10 trademark, while simultaneously depriving Julian of the supply necessary to fill
11 Julian’s orders. Healthsource began providing unacceptably low-quality
12 ingredients. Altogether, Healthsource has engaged in acts of unfair competition,
13 false advertising, trademark infringement, interference with current and
14 prospective business relations, and fraud.

15 **PARTIES**

16 2. Julian Bakery, Inc. is a California corporation with its principal place
17 of business in Oceanside, CA.

18 3. On information and belief, Healthsource International, Inc. is a
19 California corporation, doing business as “nücoconut,” with its principal place of
20 business in Chino Hills, CA.

21 **JURISDICTION AND VENUE**

22 4. The Court has subject matter jurisdiction over the underlying action
23 pursuant to 28 U.S.C. §§ 1331 and 1367, and 15 U.S.C. § 1121, because this is an
24 action for violations of the Lanham Act, 15 U.S.C. § 1051 *et seq.*; California
25 Business & Professions Code § 17200 *et seq.*; and California Business &
26 Professions Code § 17500 *et seq.*

27 5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391.

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FACTUAL BACKGROUND

Julian and Healthsource Business Relationship

6. Julian and Healthsource first began a business relationship when Healthsource approached Julian to sell Julian coconut flour.

7. Julian then independently developed the idea of coconut wraps and coconut cereal, and contacted Healthsource about serving as Julian's supplier. Healthsource ultimately agreed and has since provided Julian with coconut-based ingredients from a third-party manufacturer/exporter in the Phillipines.

Competing Coconut Wrap Products

8. Julian utilizes Healthsource's coconut-based ingredients in many of its products, including Julian's specialized coconut wrap product, which is sold in connection with U.S. Trademark Reg. No. 5,028,938, "PALEO WRAPS."

9. On information and belief, Healthsource took Julian's specialized PALEO WRAPS product and created its own coconut-based wrap, selling them under the "NUCOCONUT" or "NUCO" label.

10. On information and belief, Healthsource began offering these "NUCO wraps" at least as early as March 2016, when Healthsource advertised its coconut wraps at Expo West, a natural products and health foods exhibition.

11. Healthsource currently sells its NUCO wraps through its own website and online retailers, including Amazon.com.

12. On information and belief, Healthsource has, and/or continues to market its NUCO wraps in part by purchasing Google AdWords associated with Julian's PALEO WRAP trademark.

Healthsource Sabotages Julian's Business

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1 13. Simultaneous with the launch of its NUCO wraps, Healthsource
2 decreased the volume of its deliveries to Julian, providing less-than-ordered
3 coconut wraps. This decrease in delivery volume was unannounced, unexpected,
4 and not requested by Julian. Instead, Healthsource misled Julian as to the reasons
5 for the decrease. Healthsource's withholding of necessary products from Julian
6 resulted in significant harm to Julian's business.

7 14. Healthsource has also periodically provided Julian with *too much*
8 product. Despite Healthsource and Julian having constant communication
9 regarding Julian's product needs, Healthsource has, on at least one occasion,
10 delivered more than \$100,000 worth of unrequested goods.

11 15. Healthsource's inconsistent and fraudulent delivery practices have
12 therefore allowed it to fabricate allegations of Julian's account being "past due."
13 Healthsource falsely generated invoices for which there are no corresponding
14 orders from Julian.

15 16. On information and belief, Healthsource had also been providing
16 Julian with low quality ingredients since at least as early as March 2016. The
17 coconut wraps Healthsource had provided to Julian began to deteriorate in taste
18 and texture, a quality issue that did not exist prior to Healthsource's launch of its
19 NUCO wrap product line. These low quality ingredients resulted in negative
20 customer reviews for Julian and additional lost sales.

21 17. Several shipments of Healthsource's coconut flakes cereal have also
22 contained impurities. Julian also has reason to believe that Healthsource has
23 provided goods that were not compliant with product specifications. These non-
24 conforming deliveries from Healthsource resulted in additional damage to Julian's
25 reputation, good will, business, sales, and profits. Moreover, Healthsource has
26 improperly continued to invoice and demand payment for such nonconforming
27 goods.

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Healthsource Poaches Julian's Customers

18. Contemporaneous with Healthsource's launch of its NUCO wraps, provision of low quality ingredients to Julian, and wholesale withholding of products, Julian is informed and believes that Healthsource also began to solicit Julian's customers to directly purchase Healthsource's NUCO wraps instead of Julian's PALEO WRAPS.

19. On information and belief, Healthsource's CEO, Ronaldo "Ricky" Santos, approached Sunfood Corp. ("Sunfood")—one of Julian's customers—about purchasing coconut wraps directly from Healthsource instead of purchasing coconut wraps from Julian. On information and belief, Mr. Santos also misleadingly told Sunfood that Healthsource, and not Julian, makes the PALEO WRAPS products Sunfood had been purchasing from Julian.

20. On information and belief, Mr. Santos has also falsely claimed that Julian's PALEO WRAPS products that were featured on the television show *Dr. Oz* were, in fact, Healthsource's NUCO wraps. These erroneous claims have been made and shared on Facebook and other social media sites.

COUNT ONE

Trademark Infringement (15 U.S.C. § 1114)

21. Julian repeats and realleges the allegations set forth above.

22. PALEO WRAPS, U.S. Trademark Reg. No. 5,028,938, is a valid and protectable trademark, owned by Julian. In fact, Julian has used the PALEO WRAPS mark in commerce in connection with its products before any one else.

23. PALEO WRAPS is inherently distinctive and/or has acquired distinctiveness through secondary meaning. That is, Julian's use of the PALEO WRAPS mark has come to be uniquely associated with Julian.

24. Healthsource, however, also uses the PALEO WRAPS mark to promote and sell its coconut-based wraps, without Julian's consent. Healthsource uses the PALEO WRAPS mark in a manner that is likely to cause confusion

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among ordinary consumers as to the source, sponsorship, affiliation, or approval of the goods.

25. Healthsource acted knowingly and willfully, with full knowledge of the likelihood of confusion and with the intent to deceive consumers in order to trade off the efforts and earned goodwill and reputation of Julian.

26. By reason of the foregoing acts of trademark infringement, Julian has been injured in an amount not yet ascertained. Further, Healthsource has been unjustly enriched by virtue of its deception of consumers and misappropriation of Julian's goodwill.

27. In addition, as a result of Healthsource's acts of infringement, Julian suffered and will continue to suffer irreparable harm for which Julian has no adequate remedy at law, including damage to Julian's goodwill. Unless Healthsource's acts of infringement are enjoined by this Court, Julian will continue to suffer irreparable harm.

28. Healthsource's actions have been knowing, intentional, wanton, and willful. The principles of equity warrant an award to Julian of treble damages and profits, attorney's fees, and the costs of this action pursuant to 15 U.S.C. § 1117.

COUNT TWO

False Designation of Origin (15 U.S.C. § 1125(a)(1)(A))

29. Julian repeats and realleges the allegations set forth above.

30. Healthsource's use of the PALEO WRAPS mark in interstate commerce, without Julian's consent, is a false designation of origin that is likely to cause a likelihood of confusion, mistake, and deception as to source, sponsorship, affiliation, and/or connection in the minds of the public.

31. By reason of the foregoing, Julian has been injured in an amount not yet fully determined, while Healthsource has been unjustly enriched by virtue of its deception of consumers and misappropriation of Julian's goodwill.

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32. As a result of Healthsource's actions, Julian suffered and will continue to suffer irreparable harm for which Julian has no adequate remedy at law, including damage to Julian's goodwill. Unless Healthsource's acts of infringement are enjoined by this Court, Julian will continue to suffer irreparable harm.

COUNT THREE

34. Julian repeats and realleges the allegations set forth above.

36. Healthsource knowingly or willfully misrepresented the public as to the facts above.

38. Healthsource's commercial messages and statements are either literally false or literally true but ambiguous and have the tendency to deceive the market, the public, consumers, potential consumers, and competitors of Julian.

40. Healthsource caused its falsely advertised goods to enter interstate commerce.

41. Julian has been or is likely to be injured as a result of the foregoing either by direct diversion of sales from itself to defendant, or by lessening of the goodwill which its products enjoy with the buying public.

COUNT FOUR

Unfair Competition (Cal. Bus. & Prof. Code § 17200 *et seq.*)

42. Julian repeats and realleges the allegations set forth above.

43. Healthsource's actions as alleged herein were unlawful, unfair, and/or fraudulent.

44. As a result of Healthsource's unlawful, unfair, and/or fraudulent acts, members of the public were or are likely to be deceived.

45. Julian has been harmed by Healthsource's unlawful, unfair, or fraudulent business acts and practices as alleged herein, including the loss of money or property.

46. Healthsource should be preliminarily and permanently enjoined from further violations of the law.

47. As a result of Healthsource's unfair competition, Healthsource should also be ordered to disgorge the profits it has received as a result of its conduct, in an amount to be proven at trial.

COUNT FIVE

False Advertising (Cal. Bus. & Prof. Code § 17500 *et seq.*)

48. Julian repeats and realleges the allegations set forth above.

49. In connection with the conduct alleged above, Healthsource has made statements in its advertising that are false or misleading. Healthsource knew or by the exercise of reasonable care should have known that the statements were false or misleading.

50. Members of the public were, or are likely to be, deceived by Healthsource's false or misleading statements.

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51. Healthsource should be preliminary and permanently enjoined from making further false and misleading statements, and should make corrective disclosures.

53. Julian repeats and realleges the allegations set forth above.

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59. Healthsource's failure to provide goods with the expected quality was a substantial factor in causing Julian's harm.

61. Julian repeats and realleges the allegations set forth above.

63. At the time of purchase, Healthsource knew or had reason to know that Julian was relying on Healthsource's skill and judgment to select or furnish product that was suitable for that particular purpose.

64. Julian justifiably relied on Healthsource's skill and judgment in purchasing the coconut-based goods from Healthsource, but received goods not suitable for their particular purpose.

65. Julian took reasonable steps to notify Healthsource within a reasonable time that the good were not suitable but was nevertheless harmed.

66. As a result of Healthsource's failure to deliver a product free of said defects, and in breach of their duties to satisfy the warranty of fitness, Julian has suffered damages in the form of funds paid to obtain the defective products, as well as consequential and incidental damages including lost profits and damage to reputation and future sales, in an amount to be determined at trial.

67. Healthsource's failure to provide goods with the expected quality was a substantial factor in causing Julian's harm.

68. Healthsource never disclaimed the applicability of any warranties regarding the products required to be manufactured as alleged herein. On information and belief, the products received by Julian are not substantially free of defects.

COUNT EIGHT

69. Julian repeats and realleges the allegations set forth above.

70. Healthsource has made representations, promises, and assurances regarding its manufacturing and sourcing acumen—including its ability to deliver high-quality products—to Julian.

71. As a result of Healthsource's representations, promises, and assurances, Julian was induced and did enter into a business relationship with Healthsource, by ordering coconut wraps and coconut flakes, for Julian's specially-formulated products.

72. On information and belief, the representations, promises, and assurances made by Healthsource were, in fact, false at the time they were made. Healthsource knew the statements to be false and did not intent to deliver high-quality products formulated to Julian's specifications, or in the quantity Julian requested, or according to the timetables and amounts the parties agreed to.

73. On information and belief, Healthsource instead intended to verify consumer demand for products similar to Julian's PALEO WRAPS by successfully completing initial orders from Julian, and once the product's demand was validated, utilize Julian's research and product development for its own benefit, siphoning customers and vendors away from Julian.

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78. As a result of Healthsource's deceit and fraudulent conduct alleged herein, Julian has been damaged in an amount to be determined at trial. Julian is also entitled to an award of punitive damages arising from the fraudulent conduct alleged herein.

Intentional Interference with Contract

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PRAYER FOR RELIEF

Julian respectfully requests this Court enter judgment against Healthsource and grant the following relief:

- a. Judgment in Julian's favor on all claims herein;
- b. Preliminary and permanent injunctions preventing Defendant from continued infringement of Julian's intellectual property rights, including infringement of Julian's registered trademark;
- c. Preliminary and permanent injunctions preventing Defendant's continued violations of the Lanham Act, California's UCL, and California's FAL, including enjoining further false and misleading statements and requiring corrective disclosures;
- d. An accounting and award of Defendant's profits resulting from its trademark infringement, false advertising, unfair competition, fraud, and interference with contract and prospective economic advantage;
- e. An award of actual, consequential, and incidental damages suffered by Julian, including lost profits and the cost of nonconforming goods paid for to Defendant;
- f. A trebling of any monetary award as a result of Defendant's willful and wanton conduct;
- g. An award of exemplary and punitive damages
- h. Any applicable pre- and post-judgment interest;

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- 1 i. An award equal to Julian's attorney's fees and costs; and
2 j. Such other and further relief as the Court deems proper.

3 **JURY DEMAND**

4 Julian hereby demands a jury trial on all issues so triable.

5 Dated: October 18, 2016

GORDON & REES LLP

6 By: /s/ Richard P. Sybert
7 Richard P. Sybert
8 Sean D. Flaherty
9 Attorneys for Plaintiff
10 Julian Bakery, Inc.
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